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Acting Defensively for the Sake of Our Attacker

Kimberley Brownlee

ABSTRACT: Despite worries about paternalism, when we are unjustifiably attacked, we are morally warranted, and sometimes required, to act in self-defence for the sake of our attacker to prevent him from committing this morally defiling act. Similarly, when a third-party is unjustifiably attacked and we can assist without undue cost, we are morally warranted, and sometimes required, to act in third-party defence for the sake of the attacker as well as the victim, to prevent the attacker from committing this morally defiling act. The case for these claims can be extended to national defence and humanitarian intervention.

KEYWORDS: moral defilement, self-defence, third-party defence, killing, paternalism, autonomy, mandatory rescue, rights to assistance, humanitarian intervention

Introduction

Reportedly, the Dalai Lama was once asked: What would you do if a guy came at you pointing a gun? The Dalai Lama apparently replied that he would shoot the man in the knees and then go over and comfort him. The Dalai Lama might comfort the man for the pain in his knees. But, he might also comfort him and feel compassion for him for his intention to kill unjustifiably. The Dalai Lama may be

saying that he would incapacitate the attacker as much to protect the attacker from committing a murder as to protect his own life.¹

In this anecdote lies the kernel of the position I defend in this paper. It's a position that takes issue with some standard liberal commitments. Standard liberal thinking says that we may interfere, and sometimes should interfere, with a person's wrongful conduct when it threatens to harm other people or ourselves.² But, we should not interfere with a person's wrongful conduct when it affects only himself.³ The reason for this lies in a worry about paternalism and disrespect for persons' autonomy. The essential thought is that the reasoning agent's own good is never sufficient warrant to interfere.

This essential thought has implications for the reasons that can legitimately govern our decision to interfere when a person's wrongful conduct affects other people. In cases of unjustified lethal aggression, for instance, liberalism is committed to the view that we may act in self-defence and third-party defence *for the sake of the victim*, but not *for the sake of the attacker*.⁴ In a nutshell, since a reasoning agent's

¹ Kimberley Brownlee, *Conscience and Conviction: The Case for Civil Disobedience* (Oxford: Oxford University Press, 2012), p. 39.

² For an account of the duty to defend third-parties even when that kills the attacker, see Cécile Fabre, 'Mandatory Rescue Killings', *The Journal of Political Philosophy*, 15: 4 (2007), pp. 363-384 at p. 365. Fabre discusses various qualifiers, such as the fact that ought implies psychological can, and that we can only have a duty when it's not unduly burdensome for us or others.

³ See John Stuart Mill, *On Liberty* (various editions, 1859) ch. 1, for what is now called the 'harm principle'.

⁴ In other work, I argue against describing people with essentialist labels, especially in the context of criminal justice, such as 'criminal', 'offender', 'crook', 'murderer', 'rapist', and so on. Therefore, I am averse to using the term 'attacker'. Nonetheless, with reluctance, I use it here so that my main

own good is never sufficient warrant to interfere, an attacker's own good cannot legitimately figure among the operative reasons for defending his victim.⁵

Yet, despite worries about paternalism and disrespect, an attacker's moral situation is more often our business than we suppose. This paper shows that:

1. When we are unjustifiably attacked and we can act in self-defence with non-debilitating force, we have a *pro tanto* moral duty to do so for the sake of our attacker regardless of his culpability, to prevent him from committing this horrific act.⁶ (Section 2)

2. Similarly, when a third-party is unjustifiably attacked and we can intervene with non-debilitating force against the attacker, we have a *pro tanto* moral duty to defend the victim both for the victim's sake and for the attacker's sake,

contention – that the person who attacks is morally needy in ways we have a duty to recognise – does not drown in gentler, looser language which undeniably would better honour that contention.

Kimberley Brownlee, 'Don't Call People "Rapists": On the Social Contribution Injustice of Punishment', *Current Legal Problems* 69 (2016), pp. 327–352.

⁵ For influential discussions of autonomy and paternalism, see David Archard, 'Paternalism Defined', *Analysis* 50 (1990), pp. 36–42; Gerald Dworkin, 'Paternalism', *Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (2010); Gerald Dworkin, *The Theory and Practice of Autonomy* (Cambridge: Cambridge University Press 1988); Joel Feinberg, *Harm to Self* (Oxford: Oxford University Press, 1989); Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986); Seana Shiffrin, 'Paternalism, Unconscionability Doctrine, and Accommodation', *Philosophy and Public Affairs* 29 (2000), pp. 205–50; Richard Thaler and Cass Sunstein, *Nudge* (New Haven, Yale University Press, 2008).

⁶ I understand acting 'for the sake of the attacker' to mean acting for the reason that we have a duty to act which is grounded in the attacker's right to assistance.

regardless of the attacker's culpability, to prevent him from committing this horrific act. (Section 2)

3. When we are unjustifiably attacked, but can only self-defend with debilitating or lethal force, we still owe it to our attacker, regardless of his culpability, to attend to his interests including his interests in avoiding moral defilement. We must choose between the sub-optimal options of either letting him carry out his attack or debilitating or killing him. What matters is that we intend to be assistive. We are morally warranted, but not required, to act in self-defence *for the sake of our attacker*.⁷ (Section 3)

4. When a third-party is unjustifiably attacked and we can intervene only with debilitating or lethal force against the attacker, we still owe it to the attacker, regardless of his culpability, to attend to his interests including his interests in

⁷ I speak of our being morally 'warranted' rather than 'permitted' or 'justified' because both 'permission' and 'justification' have technical meanings that would mis-describe the moral situation in the cases discussed here. Being morally 'permitted' means (following Hohfeld) having no moral duty not to act. Being morally 'justified' means acting on morally undefeated reasons. In the cases of moral warrant explored here, victims and interveners have reasons not to intervene that might override or outweigh the reasons that give them moral warrant to intervene. By 'morally warranted', I mean that victims and interveners do something morally acceptable, or at least they attend properly to genuine moral reasons, even if those reasons are overridden or excluded by other moral reasons.

avoiding moral defilement. As in 3., we are morally warranted, but not required, to act defensively *for the sake of the attacker*.⁸ (Section 3)

5. This analysis can be extended *mutatis mutandis* to national defence and humanitarian intervention. It applies both at the individual level to the soldier's warrant, or duty, to act defensively against an unjustified attacker for the attacker's sake, regardless of the attacker's culpability, to prevent him from committing morally defiling acts; and at the collective level to the unjustly attacked state's duty or a third-party state's duty to prevent an unjust aggressor state *for its own sake* from wrecking as much havoc as it otherwise would do. (Section 4)

To defend these five claims, we must show first that an attacker's own good can be sufficiently morally important to give us a *pro tanto* moral duty or warrant to act. To show this, we must answer a challenge from Jeff McMahan on preventing evil versus preventing non-wrongful harm.

1. Evil and Harm

According to McMahan, we have two non-contingent reasons to prevent serious moral wrongdoing (evil) when we can do so without undue cost. The first reason is to protect a person from moral defilement. The second is to prevent an impersonally bad event. McMahan says that these two non-contingent reasons are

⁸ In this paper, I defend more than a simple *principle of humanity* according to which everyone's interests carry weight in defensive scenarios. I argue that we must expand the range of interests we take into account to include the attacker's particular interest against being morally defiled.

easily outweighed. He drives home his argument with a thought experiment:

Cliff: Suppose we could either prevent one innocent person from being wrongfully pushed off a cliff or, instead, prevent one innocent person from accidentally and faultlessly walking over a cliff *and* prevent someone else from losing a leg.

McMahan says it would be perverse *ceteris paribus* to prevent the murder rather than do the other two things.⁹

For a start, McMahan poorly frames his thought experiment since he downplays the fact that *two* people are involved in each cliff case. It is easy to see that there are two stakeholders in the accidental death and loss of leg case: Person C who falls and Person D who loses a leg. But, there are also two stakeholders in the murder case. Not only is there innocent Person A who is pushed. There is also Person B who wrongfully pushes. All four people have interests as persons. All four can be morally needy. Consequently, we should consider all their interests when we decide which events to prevent.

To this, McMahan would likely reply that even if Person B's interests in not doing evil do carry weight in determining what we should do, that weight is easily outweighed. McMahan's experiment reflects the thought that, when costs have to be borne by someone, they should be borne by the person responsible for wrongdoing rather than by an innocent person. In short, innocent Person D shouldn't have to lose a

⁹ Jeff McMahan, 'Humanitarian Intervention, Consent, and Proportionality', in N. Ann Davis, Richard Keshen, and Jeff McMahan (eds.), *Ethics and Humanity: Themes from the Philosophy of Jonathan Glover* (Oxford: Oxford University Press, 2010), pp. 44-72, at pp. 60-1.

leg so that we can prevent Person B, who is bent on evil, from becoming guilty of murder.

But, here is a different case that generates the opposite intuition:

Pure Rape: Suppose we could either prevent one innocent Person E from becoming a victim of a pure rape by Person F or by Persons F, G, and H, or instead prevent Person J from accidentally losing a leg.

A ‘pure rape’ is a rape that the victim does not detect, as she is unconscious during the attack. If the rape is never revealed to her, she never knows that she was raped.¹⁰

Now, if *harm* is the conscious experience of injury, then no harm comes to Person E if we prevent the loss of the leg, and substantial harm comes to Person J if we prevent the pure rape. Evil occurs in the pure rape case, and no evil occurs in the leg-loss case. Despite these facts, my rock-solid intuition is that we should prevent the rape rather than the accidental loss of a leg, and it would be perverse to do otherwise.

Innocent Person J should have to endure the leg-loss so that we can prevent Person F (or Persons F, G, and H) from committing the rape of Person E.¹¹ Why?

¹⁰ BBC News, ‘Former Vanderbilt college football player convicted of rape’, BBC, 19 June 2016: <http://www.bbc.co.uk/news/world-us-canada-36570055>.

¹¹ If a sceptical reader said that our intuitions in *Pure Rape* are distorted by the *prospect* that the victim will learn of the rape, we can revise the example so that the person dies in the attack and never learns of the rape. In this revised example, we can either prevent Person F from committing pure rape and murder of Person E or prevent Person K’s accidental death and Person J’s loss of a leg. My intuition remains the same. If we can do only one thing, we should prevent the rape and murder.

Even though no victim is *harmed*, there is greater badness or disvalue in a pure rape than in an accidental loss of a leg.¹² The possible sources of this badness are the extreme wrongness of the rights-violation of Person E and the harm or defilement that perpetrating it does to Persons F, G, and H.¹³

This leads us to the main underlying argument for the five core claims of this paper. That argument is a familiar one, but it is not one that has been applied to cases of unjustified lethal aggression calling for defensive action. Briefly, the argument is that it is part of morality, and indeed part of respect, that we care about each other's wellbeing. More specifically, it is part of morality that we care that we each flourish by cultivating genuinely valuable relationships, projects, and goals.

Crucially, attending to each other's flourishing means also caring about each other's moral situation, and a person's moral situation is radically compromised if she commits morally defiling acts. The point of this paper is that unjustified attackers are needy, qua attackers, in ways that demand our moral attention since they engage in morally defiling acts. They need our assistance – our intervention – to improve significantly their prospects to flourish, including in some cases intervention that is at the cost of their life. Borrowing language from Cécile Fabre,

¹² For a discussion tending in a similar direction, see Victor Tadros, *Wrongs and Crimes* (Oxford: Oxford University Press, 2016), ch.9, section II.

¹³ Note, when Peter Singer considers whether we should '...give independent weight to stopping a moral evil, beyond the harm that has been prevented by stopping the evil', he brackets the possibility that our intervention could morally assist the person committing the wrong. Peter Singer, 'Bystanders to Poverty', in N. Ann Davis, Richard Keshen, and Jeff McMahan (eds.), *Ethics and Humanity: Themes from the Philosophy of Jonathan Glover* (Oxford: Oxford University Press, 2010), pp. 185-201.

...if [we] are in a position to improve significantly someone else's prospects for a flourishing life by helping them meet their needs, then [we] are under a duty to do so at the bar of justice, which is also to say that the needy have a right to assistance.¹⁴

My thought – that attackers are morally needy and have a right to our assistance to improve their prospects to flourish when we're in a position to help – relies on the assumption that there is a necessary connection between human wellbeing and human goodness, which other philosophers have ably defended elsewhere. For instance, Philippa Foot makes a convincing point about what it means to *benefit* someone. She considers the case of the serial killers Frederick and Rosemary West,

...who did not even spare their own children in their career of abuse and murder. For many years they were able to act out their sexual fantasies free from detection, and might well have continued to do so to the end of their natural lives. What then would it have been right to say about the contribution of those whose behaviour made this kind of thing possible? Would they have *benefited* the horrible Wests? It seems to me that in our natural refusal to say so we glimpse a conceptual truth that does not usually lie so clearly on the surface. And that if the usual conceptual connections hold here, as they surely do, between benefit and what is for someone's good, what has come to the surface is also about that.¹⁵

¹⁴ Fabre then argues that victims of lethal attacks are needy and, in some circumstances, have a right that we kill their attacker in their defence. See Fabre, 'Mandatory Rescue Killings', p. 365.

¹⁵ Philippa Foot, *Natural Goodness* (Oxford: Oxford University Press, 2001), p. 94.

In short, the people who unwittingly advanced the Wests' projects did not serve their wellbeing. On all but thoroughgoingly subjectivist conceptions of *wellbeing*, the things that benefit a person are necessarily compatible with her moral good, and the things that serve her moral good are among the things that benefit her.¹⁶ Conversely, the things that serve a person's moral corruption are among the things that are detrimental to her wellbeing. A reasonable person should much rather lose a leg than be guilty of pure rape or murder. If Foot's commonly held view about what *benefits* someone is correct, then we have moral reasons, indeed, moral duties both to assist each other in cultivating good moral qualities and to safeguard each other's basic morality as well as we can without undue cost to ourselves or others.¹⁷

Note that the emphasis here is on *basic* morality. Our aim must be to support each other at a basic moral level. This means working to protect each other from doing what we have no right to do and no good reason to do, and working to offer each other the conditions necessary for the prospect of flourishing. It is not about *making* each other be positively free or virtuous in any grand sense.

A sceptical reader might grant that we have reasons to support each other morally, but wonder why one person's interests in morality should sometimes take priority over another person's interests against suffering (non-wrongful) harm. One

¹⁶ 'Thoroughgoingly subjectivist' conceptions of *wellbeing* can have both subjective and objective elements. On such conceptions, acts and events can be objectively bad and yet fail to affect a person's wellbeing unless they affect her subjectively, such as by tormenting her.

¹⁷ What constitutes an 'undue' cost is context-specific. See Judith Lichtenberg, *Distant Strangers* (Cambridge: Cambridge University Press, 2014), p. 122ff, where she argues that demandingness is not a fixed quantity, but instead depends largely on what the people around us have, want, and value.

answer is that it is unduly retributive, and potentially unfair, to say that a person like Person F who has acted wrongly must always have his interests count for less than the interests of another person like Person J. First, someone like Person F who acts unjustifiably might have an excuse or might be profoundly remorseful the moment after, or might be non-responsible. Second, regardless of his mental states, he is still a *person*. Unless we take the cold-hearted view that people who commit serious wrongs are irredeemable and, hence, of permanently lesser status, we must continue to include their interests on an equal footing in our calculations of what we should do.¹⁸ Avishai Margalit observes that:

Even if there are noticeable differences among people in their ability to change, they are deserving of respect for the very possibility of changing. Even the worst criminals are worthy of basic human respect because of the possibility that they may radically reevaluate their past lives and, if they are given the opportunity, may live the rest of their lives in a worthy manner ... Even though it is likely that she will continue living this way, this likelihood should not be turned into a presumption, because in principle an evildoer has the capacity to change and repent.

¹⁸ The exception might be when a wrongdoer's interests conflict with his victim's interests rather than with the interests of an unrelated person who will suffer non-wrongful harm.

‘This capacity’, Margalit continues, ‘implies that she deserves basic respect as a human being who should not be “given up on”, precisely because there is a chance, no matter how small, that she will repent.’¹⁹

Returning to my thought experiment countering McMahan, we avert greater badness or disvalue when we prevent the pure rape than when we prevent the leg-loss. Given the link between human goodness and human wellbeing, greater badness issues from the grossly wrongful, but non-harmful violation of Person E combined with the moral defilement of Persons F, G and H than from the leg-loss of Person J. Put differently, we have greater reason *ceteris paribus* to protect F, G, and H from the morally defiling (and psychologically-threatening) experience of committing pure rape and, of course, to protect E from that violation, than we have to prevent Person J from losing a leg.

Now, if, as I argue, the badness of a wrongful harm is greater than the badness of a comparable non-wrongful harm at least when small numbers of people are involved, then we have at our disposal two further arguments to show that we have not-so-easily-defeated, non-contingent reasons to prevent serious wrongdoing. These two further arguments both fall under the slogan that, ‘When it comes to morality, we’re all in this together.’ In other words, a person’s moral good is intertwined with our own moral good. When we stand idly by, first, we are complicit. Second, we stall the collective moral project of striving to be good and do good. Certainly, we are complicit and morally obstructionist when we stand by while people endure naturally caused harms, but we are even more complicit and morally obstructionist when we stand by while people do evil and endure evil, since evil acts are morally worse than

¹⁹ Avishai Margalit, *The Decent Society* (Cambridge: Harvard University Press, 1996), pp. 70-75. Cited from John Tasioulas, ‘Punishment and Repentance’, *Philosophy* 81 (2006), pp. 279-322.

comparable non-wrongful harms. Intentions matter. And, our moral interconnectedness enables us to answer the person who says: ‘You should not allow an innocent person to suffer the loss of a leg so that you can prevent someone else from being guilty of murder.’ We can answer: ‘We’re in this morality business together and you, as well as I, have strong moral reasons related to our own moral goodness and each other’s moral goodness *ceteris paribus* to prevent another person from becoming guilty of murder. Among other things, that person has a claim-right upon us as a morally needy being whose prospects to flourish we can significantly improve by assisting him. If we ignore his claim-right, we do an injustice.’

So, in sum, the non-contingent reasons to prevent serious wrongdoing, which McMahan says are easily outweighed, have more bite to them than he acknowledges. And, once we see this, we can appeal to these two further non-contingent reasons – complicity and moral obstruction – to bolster the case that *ceteris paribus* we should prevent evil before preventing comparable non-wrongful harms.²⁰

Now, in addition to the non-contingent reasons to prevent serious wrongdoing

²⁰ I’m inclined to bite the bullet and say that, even when large numbers of people are involved, we have more reason to prevent wrongful catastrophes than non-wrongful catastrophes. As I argue in Section 4, people have strong complicity-related interests in our stopping their nation from committing horrific wrongs. That said, in large-number cases, saving lives is the priority. When the numbers get large enough, we all tend to become consequentialists. Typically, we should prevent non-wrongful catastrophes before preventing smaller-scale wrongs. Peter Singer’s discussion about being by-standers to poverty, which McMahan endorses, is about numbers. Singer highlights that, just as six million Jews died in the Holocaust, so too at least six million people died from preventable, poverty-related illnesses every year of the 1990s. I suspect that our intuition that we should prevent poverty-related diseases as assiduously as we should prevent genocide arises partly from our sense that global poverty, famine, and weather-related disasters are not natural events. Much human evil undergirds them.

(or evil), we have contingent reasons to prevent it, which McMahan does acknowledge. These contingent reasons turn on the fact that serious moral wrongs often bring with them harsh consequences for everyone affected. In the real world, these harsh consequences are common enough events that they make it often more important to prevent murders than natural events. Indeed, since we must act from a position of uncertainty when we decide to intervene, we must assume those consequences will happen and should be averted if possible.

In more detail, a person's conduct and wellbeing intertwine with other people's psychological, material, and moral wellbeing, including his family's wellbeing and the victim's family's wellbeing. It is a very different thing to have our father be murdered or commit a murder than to have him be killed in an accident. (Of course, our *beliefs* about what happened matter in such a case, but those beliefs are likely to track events correctly at least with respect to the manner of the death.) Moreover, murders usually trigger a host of heavy legal, social, and political consequences that will be borne by many people including the family of the person who committed the murder, the victim's family, the local community, and the guilty person himself, who faces the risks in prison of becoming a victim of abuse or agent of abuse, acquiring STDs or other illnesses, being injured, suffering a hardening of personality, and possibly being executed, which are far heavier costs than the loss of a leg.

Together, the above arguments answer McMahan's challenge. Not all readers will be won over to the (undeniably common) view that we have good reason to prevent evil before preventing comparable non-wrongful harms. Nevertheless, I have offered enough at least to 'call it a draw' with McMahan and, hence, to proceed with

the analysis of the defensive duties that flow from accepting my view that we have strong reasons to care about persons' moral good.

Of course, a tension exists between our reasons to care about persons' moral good and our reasons to respect their individual autonomy including their degree of freedom to act wrongly. Obviously, that degree of freedom does not extend to unjustified lethal aggression (or to any form of serious, unjustified aggression): the unjustified aggressor has no right to act as he does.²¹ But, our knee-jerk respect for persons' degree of freedom misleads us into thinking that we interfere legitimately with unjustified lethal aggression only when we are motivated *strictly* to save the victim, and not to protect the attacker from his act.²² The point that the following discussion makes clear is that, when we are warranted or duty-bound to act defensively, it is at least partly *for the moral sake of the attacker* regardless of his culpability. In unjustified life-threatening cases, we must privilege our reasons and duties to care about persons' morality over our reasons to respect to their autonomy. Indeed, our reasons to respect their autonomy are not salient where they have no right to act.

This discussion investigates three kinds of defensive action: 1) non-debilitating defensive action (Section 2); debilitating and lethal defensive action (Section 3); national defence and humanitarian intervention (Section 4), and then answers some remaining questions (Section 5). Before proceeding, let me note that

²¹ As Robert Nozick notes, 'My property rights in my knife allow me to leave it where I will, but not in your chest.' Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, 1974), p. 171.

²² I thank Avia Pasternak for noting that my argument can extend *mutatis mutandis* to unjustified, non-lethal but debilitating aggression. It would be horrible for an attacker unjustifiably to cause great and irrevocable mental harm to a person or make that person's life not worth living.

the cases I discuss here depict life-threatening situations of a particular kind: exigent, one-off, crisis moments of aggression that must be answered with forceful, and sometimes lethal, defensive action to prevent unjustified killing. The analysis of such cases cannot be extrapolated to contexts such as a caregiver allowing a dependent to die slowly through neglect, since forceful defensive action against the caregiver would be neither necessary nor sufficient to protect the victim or morally assist the caregiver.

2. Non-Debilitating Defensive Force

When we can prevent an unjustifiable attack on ourselves with non-debilitating force, we have a *pro tanto* moral duty to act in self-defence regardless of whether 1) we want to save our own life, 2) we have an interest in saving our own life, or 3) our attacker is morally culpable. We have a duty to the attacker as a morally needy party to assist him by preventing him from performing a horrific act.

The truth of 1) and 2) comes out in the following cases:

Suicidal Victim: Ali is deeply depressed and suicidal. A situation arises, which Ali anticipates, in which Bo unjustifiably attacks her. If Ali acts in self-defence, she'll save herself without debilitating Bo. Instead of acting in self-defence, Ali lets herself be killed since she wants to die anyway.

Terminally Ill Victim: Ali's life is not worth living (or she reasonably believes it is not worth living). A situation arises in which Bo unjustifiably attacks her. If Ali acts in self-defence, she'll save herself without debilitating

Bo. Instead of acting in self-defence, Ali lets herself be killed since she has no interest in saving her own life.

In both cases, Ali has a moral duty to Bo not to let him be the instrument of her death. In deciding not to self-defend, Ali disregards Bo as a needy person whose prospects for flourishing she can promote without undue cost. Moreover, she leaves Bo exposed to high risks. Most likely, his life will be ruined. He faces the prospect of feeling horror at having unjustifiably killed someone, of being convicted for murder, of spending much of his life in jail, and possibly of facing capital punishment. So, Ali has at least a *pro tanto* duty to act in self-defence *for Bo's moral sake* even if she neither wishes nor has reason to save herself for her own sake.

Now, a critic might grant these points in relation to Suicidal Victim, but argue that, in Terminally Ill Victim, Ali has the personal prerogative to confer greater weight on her own interest in ending her life than on Bo's interest in avoiding the harms just described.²³

In reply, first, we cannot legitimately fulfil our own interests through *any* means that present themselves. Our interests in companionship do not give us the right to force our society on the next person who walks by. Our need for food do not give us the right to take food from the mouth of someone who is malnourished. Similarly, Ali's interest in dying does not make it legitimate for her to take advantage of Bo's wrongdoing to end her life. Second, we have no personal prerogative to privilege our own interests over others' interests *regardless* of the interests at stake. For instance, I have no personal prerogative to privilege my interest in reading an article for another ten minutes over a drowning child's interest in being rescued easily

²³ I thank Cécile Fabre for pressing me to address this issue.

from a pond when I'm the only one nearby to save her. Similarly, Ali has no personal prerogative to privilege her interest in ending her life over Bo's interests in not committing a horrific act (unless, perhaps, this fortuitous attack is the *only* way she can end her life).

Concerning point 3) above, both Suicidal Victim and Terminally Ill Victim are agnostic about Bo's responsibility or culpability. Bo could be attacking Ali because he mistakenly, but credibly, believes that Ali is a threat;²⁴ or because he is sleepwalking, or is a non-competent aggressor such as a child soldier, or is fully culpable. A critic might argue that Bo's level of culpability matters greatly. It determines whether Ali has a duty to privilege Bo's moral needs. The critic might say that, if Bo is sufficiently culpable, that negates the duty Ali has to act defensively for his sake: he has no right to assistance because he has forfeited his rights.

This view is mistaken, and rights-forfeiture accounts properly construed do not take this view. Even if Bo has forfeited his right not to be killed because he's fully culpable, he has not forfeited *all* of his rights. He does not become fair game for anyone who might wish to use him as they please. He does not even lose his right to life in general; he only loses his right to life against Ali during the moment of attack and against third parties who are able to save Ali at that moment. Hence, Bo retains his *right to be assisted when in need*.²⁵ Since he will be greatly morally assisted if Ali

²⁴ Suppose that, in Suicidal Victim, Bo wanders unwittingly on to the set of a Western movie in which Ali is acting, and thinks the gun Ali is waving is real. (This example is a version of one used by John Gardner.)

²⁵ Joanna Mary Firth and Jonathan Quong argue for a similar view, which they call a pluralistic account of liability to defensive harm. They hold that we can distinguish between an attacker's agency rights and his humanitarian rights. If an attacker is culpable for an unjustified attack, he forfeits his agency

uses non-debilitating defensive force to prevent his killing her, she has a *pro tanto* duty to use that force regardless of both his culpability and his forfeiting his right not to be killed if necessary.²⁶

Moreover, as noted above, a culpable person is still a person whose interests must be given due consideration. Therefore, even if Bo is culpable, Ali has a duty to give his needs due consideration when deciding how to act.

This analysis of self-defence cases extends to third-party defence cases. Specifically, we have a *pro tanto* moral duty to use non-debilitating force in third-party defence when we can do so without undue cost regardless of whether 1) we wish to effect a rescue, 2) the victim wishes or has a reason to be rescued, or 3) the attacker is culpable. The truth of 3) was shown in the analysis of culpability just given. The truth of 1) and 2) comes out in these third-party variants of the above cases:

Suicidal (or Terminally Ill) Third-party Victim: Carl knows that Ali is suicidal (or terminally ill). A situation arises, which Carl anticipates, where Bo unjustifiably attacks Ali. If Carl acts in third-party defence, he'll save Ali without debilitating Bo. Instead of intervening, Carl lets Ali be killed by Bo

right and makes himself partially liable to defensive harm. But, he is not necessarily fully liable, as he has a humanitarian right to be provided with urgently needed resources or be protected from serious harms when others can do so at reasonably low cost. Joanna Mary Firth and Jonathan Quong, 'Necessity, Moral Liability, and Defensive Harm', *Law and Philosophy*, 31 (2012), pp. 673–701.

²⁶ Below, I argue that an absolute pacifist would do a wrong to an unjustified attacker if she refused to let a third-party intervene to save her life since she should be as concerned with her attacker taking her life as she is with her would-be rescuer taking her attacker's life.

because Carl knows that Ali wishes to die anyway (or has no interest in preserving her life) and Carl would not have intervened if Ali had tried to kill herself.

Devious Friend: Carl knows that Ali is suicidal (or terminally ill) and agrees to help her die. Carl doesn't have the stomach to perform a mercy killing, but he anticipates the situation in which Bo unjustifiably attacks Ali. If Carl acts in third-party defence, he'll save Ali without debilitating Bo. Instead of intervening, Carl lets Ali be killed by Bo since he knows that Ali wishes to die (or has no interest in preserving her life).

In both cases, Carl has the same duties to Bo that Ali has in the original pair of cases, i.e. to attend appropriately to Bo's interests as a morally needy person; not to let Bo be the instrument of Ali's death; and not to let Bo face the likely consequences of killing Ali. In failing to intervene with Bo's unjustified killing, Carl disregards Bo as a morally needy person whose prospects for flourishing Carl can promote without undue cost.

A critic might argue that, for Carl's intervention to be legitimate, Carl must have Ali's consent. But, as noted above, personal prerogatives extend only so far. Ali's personal prerogatives to consent to a rescue or refuse a rescue have limits especially when others' interests are at stake.

Let's sum up what we've established so far. When we can prevent unjustified lethal aggression with non-debilitating force, we have a *pro tanto* moral duty to do so for the attacker's moral sake (among other things) regardless of the victim's wishes or interests or the attacker's culpability.

In the next section, we will see that when we can prevent unjustified lethal aggression only with lethal or debilitating defensive force, we are morally warranted, but not required, to do so.

3. Debilitating or Lethal Defensive Force

When Ali can only self-defend with debilitating or lethal force, she cannot do the morally most assistive thing for Bo, which is prevent his attack with non-debilitating force. She still owes it to Bo as a morally needy person to attend appropriately to his interests regardless of his culpability. She must choose between the sub-optimal options of debilitating/killing him or letting him kill her. Putting aside her duties to herself and focusing on her duties to Bo, Ali has reason *ex ante* to prevent Bo's attack for Bo's sake even though this will debilitate or kill him. And, she has reason *ex post* to ensure that Bo can learn from his moral wrongdoing (even though she will have been killed). Each option is, in its way, imperfectly morally assistive. What matters when she acts is her motivation. Let's unpack these claims.

To begin with, how can lethal (or debilitating) defensive force be morally assistive? Surely, killing Bo will not further Bo's prospects for flourishing.

It's true that the most obvious ways to assist a needy person are through life-preserving acts. Nevertheless, in some cases, assistive acts can be life-ending, such as euthanasia, mercy killing, assisted suicide, and even separating conjoined twins with the result that one dies quickly when the two would have otherwise slowly and painfully died together. Therefore, there is no problem, in principle, with the idea that lethal action can be assistive.

Moreover, wellbeing need not require prolonging life. Joseph Raz distinguishes biological self-interest, which does depend on longevity, from wellbeing, which does not. He states that:

A person's well-being is not reduced by the shortening of his life, nor by frustrating his biological needs, when this is the means of or the accepted by-product of his pursuit of a valuable goal. A person who undergoes great deprivations in order to bring medical help to the victims of an epidemic is sacrificing his interest in favour of that of others, but his life is no less successful, rewarding or accomplished because of that.²⁷

Of course, Bo is probably not pursuing a valuable goal by unjustifiably attacking Ali. Even so, Raz's point, if correct, suffices to show that, in principle, Bo's wellbeing can be divorced from his longevity.

Furthermore, the claim that lethal defensive force against an unjustified attacker can be morally assistive is not as counter-intuitive as one might suppose, at least in cases where the attacker is sensitive to the moral horror of unjustified lethal aggression. Consider the following scene from the 1982 film *Gandhi*, in which Hindu thugs (Goondas) come to persuade Gandhi to end his fast, which he will not break until the fighting between Hindus and Muslims stops. The Goondas lay their weapons at Gandhi's feet and promise that they will stop fighting. Then, as they turn to go, one of them, named Nahari, suddenly throws a piece of chapatti bread at Gandhi. Here is their dialogue:

²⁷ Raz, *The Morality of Freedom*, p. 296.

NAHARI: Eat.

Mirabehn and Azad [Gandhi's aids] start to move toward [Nahari] – the man looks immensely strong and immensely unstable. But Gandhi holds up a shaking hand, stopping them. Nahari's face is knotted in emotion, half anger, half almost a child's fear – but there is a wild menace in that instability.

NAHARI: Eat! I am going to hell – but not with your death on my soul.

GANDHI: Only God decides who goes to hell . . .

NAHARI (stiffening, aggressive): I – I killed a child . . . (Then an anguished defiance) I smashed his head against a wall.

Gandhi stares at him, breathless.

GANDHI (in a fearful whisper): Why? Why?

It is as though the man has told him of some terrible self-inflicted wound.

NAHARI (tears now – and wrath): They killed my son – my boy!

Almost reflexively he holds his hand out to indicate the height of his son. He glares at Suhrawardy and then back at Gandhi.

NAHARI: The Muslims killed my son . . . they killed him.

He is sobbing, but in his anger it seems almost as though he means to kill Gandhi in retaliation. A long moment, as Gandhi meets his pain and wrath.

Then

GANDHI: I know a way out of hell.

Nahari sneers, but there is just a flicker of desperate curiosity.

GANDHI: Find a child – a child whose mother and father have been killed. A little boy – about this high.

He raises his hand to the height Nahari has indicated as his son's.

GANDHI: . . . and raise him – as your own.

Nahari has listened. His face almost cracks – it is a chink of light, but it does not illumine his darkness.

GANDHI: Only be sure . . . that he is a Muslim. And that you raise him as one.

And now the light falls on Nahari. His face stiffens, he swallows, fighting any show of emotion; then he turns to go. But he takes only a step and he turns back, going to his knees, the sobs breaking again and again from his heaving body as he holds his head to Gandhi's feet in the traditional greeting of Hindu son to Hindu father. A second, and Gandhi reaches out and touches the top of his head.²⁸

²⁸ John Briley, *Gandhi* (1982). Script accessed from: <http://sfy.ru/?script=gandhi>. This dialogue points to a further reason to intervene with unjustified attacks – a reason that serves attackers and victims

Nahari is tortured by what he has done. Like most of us, he is not an essentially vicious person. He was a loving father, who became desperate with rage and grief when his enemies killed his son.

Intuitively, using lethal defensive force to prevent Nahari from unjustifiably killing a child would have been morally assistive even though it would have ended his life and he would then have had no chance to learn from his moral wrongdoing. The same can be said of debilitating force, which, like lethal force, eliminates the distinctively morally important opportunities (*ex post*) to recover from moral defilement by repenting, repairing, and morally improving.

Now, although lethal or debilitating defensive force can be morally assistive to an unjustified attacker, victims and interveners do not have a *pro tanto* moral duty to use it for the attacker's sake for two reasons. First, *ceteris paribus* it would be too morally demanding on victims and interveners to say they have a duty to become killers (or disablers) for an attacker's sake to prevent the attacker from carrying out an unjustified killing.

Second, as noted above, lethal or debilitating force is only one of the victim's or intervener's two imperfect options, the other being to allow the attack. From the point of view of attending to the attacker's interests as a morally needy party, the victim / intervener is warranted in choosing either option, but it matters how she is motivated. Consider:

Suicidal / Terminally Ill Victim 2: Ali is suicidal (or terminally ill). A

situation arises, which Ali anticipates, in which Bo unjustifiably attacks Ali. If

alike – which is that intervention, certainly if it's non-lethal, can stop a chain reaction of vengeful violence.

Ali acts in self-defence, she will save herself but will kill (or debilitate) Bo.

Instead of acting in self-defence, Ali lets herself be killed since she wants to die anyway.

Suicidal / Terminally Ill Third-party Victim 2: Carl knows that Ali is suicidal (or terminally ill). A situation arises, which Carl anticipates, where Bo unjustifiably attacks Ali. If Carl acts in third-party defence, he'll save Ali but will kill (or debilitate) Bo. Instead of intervening, Carl lets Ali be killed by Bo because Carl knows that Ali wishes to die anyway and Carl would not have intervened if Ali had tried to kill herself.

Ali and Carl are each motivated by the wrong reason if they allow Bo's attack in order to end Ali's life. Equally, Ali and Carl would each be motivated by the wrong reason if they struck out at Bo for the pleasure of killing him rather than to save Ali's life *and* prevent Bo from committing his attack. Ali and Carl only properly take Bo's right to assistance into account if they give due weight to Bo's interests as a morally needy person.

Note that the reasons why victims and interveners have no duty to act defensively when their action would kill or debilitate the attacker do not relate to the attacker's culpability. The culpable attacker has a claim as a morally needy party that we consider his interests appropriately when deciding how to act. His culpability is irrelevant to the moral status of responding with lethal or debilitating force.

To reinforce the point that attackers are needy people in defensive situations and their culpability is as irrelevant as victims' culpability, let's consider some cases involving culpable victims. The victim's culpability could refer either to her overall

moral non-innocence or to her culpability for the attack. Let's consider first the one, then the other:

Guilty Victim: Suppose Eli committed a murder long ago but was never charged, and now leads an ordinary life. One day, he is a victim of a vicious mugging by Franco and will die in the attack unless Gila intervenes. Suppose Gila knows that Eli got away with the murder.

Despite being guilty of murder, Eli does not forfeit all his rights, or all manifestations of his right to life, or his right to be assisted when in dire need: Eli's moral position is irrelevant to whether Gila has a duty to save him. If this is correct, then the same must be said for the attacker, Franco. His culpability is irrelevant to his neediness for our assistance to improve his prospects to flourish, and our moral warrant to intervene to prevent his attack on Eli rests on that neediness.

The same point applies to cases where the victim is partially responsible for the unjustified attack:

Malicious Victim: Ali wants to kill Bo, and Ali would refuse to defend herself against anyone but Bo if they happened to attack her. Ali sets up a situation that leads Bo to attack her unjustifiably, which enables her to respond in self-defence thereby killing Bo.²⁹

²⁹ This case is borrowed from Frances Kamm.

Malicious Third-party Victim 2: Ali wants to kill Bo. Ali knows that Carl is a Good Samaritan who will run to her rescue if she's attacked. Ali sets up a situation that leads Bo to attack her unjustifiably and Carl intervenes in third-party defence and kills Bo. Carl acts for the undefeated reason of saving Ali's life and morally assisting Bo, but his act is instigated by Ali's desire to kill Bo.

Ali is culpable for setting up conditions that lead to Bo's attacking her and for being wrongly motivated when she acts in self-defence (or prompts Carl to intervene). But, her degree of culpability does not alter the fact that there are credible moral reasons to take defensive action in these cases. Her culpability is irrelevant, and so too is Bo's, as they are both needy parties.

At this point, a critic might ask: What should we say about wholly *non-culpable*, innocent attackers? Don't their interests compel us to refrain from using lethal or debilitating defensive force against them? Suppose Bo is a child soldier. Shouldn't Ali let herself be killed by Bo rather than kill Bo since Bo is a child? Shouldn't Carl let Ali be killed rather than kill Bo since Bo is a child? Moreover, if Bo is non-culpable, then presumably he is less morally needy than he would be if he were fully culpable, and therefore life-ending defensive action against him is not morally assistive.³⁰

In reply, first, the non-culpable attacker is not necessarily less morally needy than the culpable attacker. Or, even if he is less needy, he is still sufficiently morally needy to fit within this analysis. A child soldier would have good reason as an adult to hate the life he'd been pressed into as a kid. Moral dilemmas such as Jim and the

³⁰ I thank Avia Pasternak for highlighting this point.

Indians, Sophie's Choice, Sartre's soldier, and many others teach us that excused attackers or betrayers have every reason to hate their moral situation. In these classic dilemmas, the moral wretchedness is unavoidable. In the defensive cases under discussion here, there's a chance to prevent the moral horror.

Second, child soldier cases have so much moral tragedy to them. But, that tragedy does not negate the moral warrant of acting defensively for the attacker's sake. It simply adds the reasons to act defensively to a mountain of pre-existing moral reasons to ensure that children don't end up in such positions, a mountain that is impossible to scale with a single course of action. Admittedly, if we intervene we must endure the moral horror of debilitating or killing a child, which is one reason that intervention is warranted but not required of us. But, if we fail to interfere with a child soldier's atrocious acts, we condemn him to a morally horrible life that he was not competent to choose or refuse.

Putting culpability aside, a critic might then say that, in cases calling for lethal or debilitating defensive force, the victim's consent matters more since the act required to save her is so serious.

In reply, this point is debatable. Consider:

Absolute Pacifist: Dawn is a committed, absolute pacifist who believes that killing another person is wrong under any circumstances. She can survive Hon's violent and lethal fit of rage only if bystander Fran kills Hon. Dawn tells Fran not to intervene.

First, as a committed pacifist, Dawn should be as concerned about Hon's killing her as she is about Fran's killing Hon. Second, Dawn and Fran do a wrong to Hon if Fran

opts not to stop him. Hon has killed in a fit of rage and, we can assume, has to live with the knowledge that Dawn could have been saved had Fran intervened and Fran didn't intervene because Dawn wanted to save Hon's life. Hon hasn't been spared, but instead carries a double guilt. Therefore, Fran has good reasons to disregard Dawn's refusal of consent.

A final objection a critic might make is that, contrary to my analysis, third-party defence cases are disanalogous to self-defence cases for reasons relating to partiality. Fabre states, for different purposes, that:

...partiality makes sense of the intuition that *V* stands in a special relationship to her attacker, as a result of which she has a special reason, which others lack, for killing him: he is threatening *her life*, and no one else's, and, accordingly, she has a vested interest, which others (on the whole) lack, in thwarting his attack...³¹

In short, interveners in third-party defence cases lack the partiality – the vested interest - that victims have to thwart the attack, so the objection goes.

In reply, first, we could adopt an impartialist moral stance and deny that a victim has a unique, special partiality for her own life or the lives of her nearest and dearest. Second, alternatively, we could grant the special partiality that a victim has in relation to her own life (or her loved ones' lives) while still insisting that we must each attend to each other's moral neediness. The fact that victims have particular self-regarding reasons to act self-defensively is independent from the moral reasons that

³¹ Cécile Fabre, 'Permissible Rescue Killings', *The Proceedings of the Aristotelian Society*, 109: 1 (2009), pp. 149-64, at p. 154.

both victims and interveners have to assist morally needy attackers by preventing their unjustified acts.

Before we turn to political violence and national defence, let me comment briefly on the controversial domain of second-party defence, putting aside lethal intervention to focus on non-lethal intervention. When someone engages in an unjustified, life-threatening self-attack, liberal thinking follows the familiar path of the harm principle by forbidding our interference when there are no public defence reasons to support it. My arguments above seem to suggest, by contrast, that we are warranted and sometimes have a duty to intervene to prevent someone from committing suicide, for the same reasons that we have a duty to intervene in self-defence and third-party-defence cases. Briefly, it seems legitimate for us to intervene in second-party defence because, as Kant's formula of humanity highlights, people have a duty to treat humanity *in their own person* as well as in the person of any other, always as an end and never merely as a means. Hence, we can extrapolate from a certain reading of Kant such as Alison Hills', that a person has stringent moral duties to himself as an end, which preclude his unjustifiably taking his own life.³² A person's unjustifiably killing himself is morally on a par in relevant ways with his unjustifiably killing another person, because in committing unjustified suicide he fails to respect himself as an end. However, not all Kantian philosophers interpret Kant along these lines. Thomas Hill Jr holds that suicides rooted in an undervaluation of rational autonomous life, for instance, would be opposed as out of keeping with an ideal moral attitude towards one's own life, but not condemned as a violation of a

³² For an analysis of duties to the self, see Alison Hills, 'Duties and Duties to the Self', *American Philosophical Quarterly*, 40: 2 (2003), pp. 131-142; and Alison Hills, *The Beloved Self* (Oxford: Oxford University Press, 2010).

strict duty to oneself.³³ Given the thorniness of that debate, which falls outside the remit of this paper, let's leave it be and turn now to political violence and national defence.

4. National Defence and Humanitarian Intervention

As hinted above, the analysis of this paper can be extended to domains of political violence such as war, at the individual level in the combat of soldiers.³⁴ It also can be extended, albeit imperfectly, at the collective level to acts of national self-defence and humanitarian intervention.

To apply the above analysis to soldiers' conduct in war, we must adopt a revisionist account of just war theory that sees war as bound by the norms of ordinary morality.³⁵ According to those norms, soldiers have moral duties, at the bar of justice, to attend to the moral needs of enemy soldiers as well as fellow soldiers.

That said, the above analysis departs from those revisionist accounts of just war theory which say that only soldiers fighting just wars have a right to defend themselves and their fellows; and that soldiers fighting unjust wars have no such right of self-defence. The above analysis departs from this view to hold that, when

³³ Thomas E. Hill, Jr., 'Self-regarding Suicide', in Thomas E. Hill (ed.), *Autonomy and Self-Respect* (Cambridge: Cambridge University Press, 1991), p. 9. Cited from Christopher Wellman, *Rights Forfeiture and Punishment* (Oxford: Oxford University Press, 2017), p.17.

³⁴ For an interesting discussion of 'love in war', see Nigel Biggar, *In Defence of War* (Oxford: Oxford University Press 2013), ch. 2.

³⁵ See Jeff McMahan, 'The Ethics of Killing in War', *Ethics*, 114 (2004), pp. 693-733; Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009); Cécile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012); and Helen Frowe, *Defensive Killing* (Oxford: Oxford University Press, 2014).

unjustifiably attacked, both soldiers fighting just wars *and* soldiers fighting unjust wars are morally warranted, and sometimes duty-bound, to act defensively, in virtue of the neediness of the unjustified attacker.³⁶

This has some surprising, but intuitive, implications. When a soldier fighting a just war unjustifiably attacks a soldier fighting an unjust war, by using a chemical weapon against him for example, the soldier fighting the unjust war has a duty to self-defend for the other's sake as well as his own if he can do so with non-debilitating force, and a moral warrant to self-defend if he can only do so with debilitating or lethal force. Moreover, other soldiers on both sides have duties to intervene for both the victim's and the attacker's sake to save the soldier fighting the unjust war who is unjustifiably attacked when they can do so with non-debilitating force, and a moral warrant when they can only do so with debilitating or lethal force. Similarly, if a soldier fighting a just war unjustifiably attacks a non-culpable civilian on the unjust side, soldiers on both sides have a duty to intervene for the soldier's sake as well as the victim's sake when they can do so with non-debilitating force, and they have a warrant, if not a duty (given the special position of non-culpable civilians), when they can do so only with debilitating or lethal force.³⁷

³⁶ This position is compatible with revisionist accounts of just war theory proposed by Jeff McMahan and Helen Frowe. Also, Saba Bazargan argues that combatants fighting an unjust war in *ad bellum* terms can have a just cause to engage in specific offensives if they are defending civilians from unjust attackers. See Saba Bazargan, 'The Permissibility of Aiding and Abetting in Unjust Wars', *The Journal of Moral Philosophy* 8 (2011), pp. 513-529. I thank Helen Frowe for pointing me to these references.

³⁷ For a defence of the moral importance of not killing civilians, see Seth Lazar, *Sparing Civilians* (Oxford: Oxford University Press, 2016).

In cases of national self-defence and humanitarian intervention, there is no case analogous to the one just described where unjust parties can have duties to strike out against otherwise just parties when those otherwise just parties engage in unjustified attacks. At the nation-level, the relevant ‘acts’ are large-scale enterprises that do not admit the possibility that *just* actors could engage in *unjustified* enterprises; if such actors engage in such enterprises, they cease to be just actors.

Extending the above analysis to national self-defence and humanitarian intervention brings with it some challenges. First, extending the analysis depends on assuming that collective action is bound by the same norms of ordinary morality as individual action, namely, that aggressor-nations have the same interests in moral goodness and flourishing that individual persons have, which gives them a right to assistance.³⁸ This assumption is reasonable since, amongst other things, a society’s members have deep interests in not being complicit in horrific wrongdoing, especially if complicity implies liability, as revisionist just war theorists suggest it does.

Second, extending the analysis also depends on assuming that defending-nations can have the same duties or warrants to protect aggressor-nations from their unjustified lethal conduct that individual persons have to protect individual aggressors from their unjustified lethal conduct.

One problem in extending the analysis in this way is the numbers. How many people’s lives must be unjustifiably threatened or lost in order to justify national self-

³⁸ Cécile Fabre has suggested that extending the analysis to national defence does not require this assumption. Instead, it requires the assumption that the norms that regulate the violence perpetrated by individual actors acting together in pursuit of political ends are the same as the norms that regulate interpersonal, non-political violence. That assumption does not require us to conceive of nations as corporate entities with interests.

defence or humanitarian intervention for the sake of the aggressor-nation's basic moral interests? Whatever the number is, it is likely to be higher than the number of victims needed to trigger legitimate intervention for the victims' sake. In other words, the victim-nation's interests in not being unjustifiably attacked would trigger a legitimate intervention much more quickly than the aggressor-nation's interests in not committing horrific acts. Indeed, the threat to just one life by an unjust aggressor-nation could be enough to trigger defensive action for the sake of the victim-nation, but not for the sake of the aggressor-nation.

A second problem is to determine what kind of defensive action is appropriate given the 'two levels of war'.³⁹ The aggressor-agent who threatens or kills a victim-nation member will probably not be among the agents who are targeted defensively by the victim-nation or intervener. Does that matter? It does if we accept that individual soldiers have moral duties to attend to how they conduct themselves personally in war. If we accept that, then we must hold that defensive action should target only those soldiers, officers, and leaders who are in fact neglecting their moral duties.

Despite these genuine problems, the central claim of this paper is highly intuitive in cases of national defence because we can readily see why it is in the interests of the members of an unjustly aggressing nation to have their nation's attacks be aborted as quickly as possible. We can see why we *owe* it to them to stop their nation committing terrible wrongs irrespective of the further risks for their society such as retaliation, social exclusion, or trade sanctions. Some members of the aggressor-nation would be innocent citizens, who must bear the costs of a prolonged

³⁹ David Rodin, *War and Self-Defense* (Oxford: Oxford University Press, 2002), ch 1.

war.⁴⁰ Some members would not be innocent citizens, but culpable non-combatant citizens, who, like the combatant soldiers, have deep interests in being prevented from perpetrating atrocities which they can only perpetrate through collective action.

5. Remaining Questions

The above analysis raises many questions. Here are five of them, which hopefully address the key outstanding issues.

First, do we have a *pro tanto* moral duty to *try* to intervene for the attacker's sake when we are unlikely or unable to prevent the attack, but will not kill or debilitate the attacker in our attempt?

One reason to say 'yes' is expressive: we show our concern for both the attacker and the victim in being willing to try to act defensively despite the improbability or impossibility of success. One reason to say 'no' is that, if the defensive act is unsuccessful as we expect it will be, the attacker's moral interests – which partly legitimate our defensive act – would not be served, and hence would not legitimate the defensive act.

Second, suppose an unjustified attacker succeeds in seriously wounding, but not killing his victim. Do we then have a duty *to the attacker* to reduce the magnitude of his act as much as possible by doing all we can to heal the victim?

⁴⁰ I thank Cécile Fabre for noting that, in the case of innocent citizens, killing their fellow (unjust) combatants would be justified not by appeal to the combatants' interests, but on other-regarding grounds. I acknowledge this, but note that this claim applies only at one of the two levels of war. Fabre also notes that the case of citizens who contribute to the unjust war in a civilian capacity lies somewhere between the case of innocent citizens and the case of (unjust) combatants.

This question is tangential to the present discussion, which is about prevention not correction, remedy, or mitigation. Nevertheless, despite intuitions that, after the fact, we should be motivated purely by concern for the victim, we can have remedial duties to the attacker for the same reasons that we can have preventative duties to him.

Third, there are different stages in an act-sequence leading to an unjustified attack including the formation of intention, the attempt, the act itself, and the outcome and consequences. The most contentious stage to interfere with is the attacker's formation of the intention to commit an unjustified attack. Suppose we could interfere with his intentions at that stage momentarily and with no lasting effect on him (unless we have to intervene repeatedly each time he forms the intention). Are we duty-bound to intervene at that stage for his sake when we can do so with non-debilitating force? Are we warranted when we can do so with debilitating or lethal force?⁴¹

From a God's eye view, intention-disruption would be legitimate as a last resort. That is, we could interfere with intention-formation if we knew for certain that interfering with a later stage in the act-sequence wouldn't be possible or successful. But, given the moral complexities, the risks of manipulation, and our lack of perfect knowledge, it is illegitimate for us to intervene at the intention-formation stage.

Fourth, in third-party defence cases where both the victim and the intervener could save the victim with non-debilitating force, who has a duty to act? If neither intervenes, who is to blame? Does either party do wrong in waiting for the other to act until it's too late?

⁴¹ I thank Victor Tadros for highlighting this issue.

These are intriguing issues that I won't explore here. Suffice it to say that we cannot transfer the moral burden. We should coordinate our efforts where possible, but we don't necessarily get off the moral hook in life-threatening cases simply because another person could perform the morally required act.

Fifth, do the reasons to intervene outlined in this paper depend on 'psychological can'? Fabre looks at the psychological costs for the intervener of acting when that includes killing the attacker. These psychological costs derive from the fact that (even permissible) killing 'elicits horror, or at the very least is tainted with the opprobrium which most societies cast on most acts of killing'.⁴²

The above discussion gives a tip of the hat to this issue by arguing that interveners are warranted, but not required, to act defensively when their act would be debilitating or lethal. That said, in other work, I have argued that, although what we are able to do informs what we can have a moral reason or duty to do, nevertheless our reasons and duties are not straightforwardly limited by 'ought implies can'.⁴³ Therefore, being psychologically unable to act defensively does not necessarily mean that we have no moral reason or duty to act defensively.

Conclusion

This paper offers partial answers to two basic questions in the literature on defensive force: What is it about situations of self-defence that entitles the victim to act?⁴⁴ What is it about situations of third-party defence that entitles the intervener to

⁴² Fabre, 'Mandatory Rescue Killings', p. 368.

⁴³ Kimberley Brownlee, 'Moral Aspirations and Ideals', *Utilitas* 22: 3 (2010), pp. 241-257; Kimberley Brownlee, "Reasons and Ideals" *Philosophical Studies* 151: 3 (2010), pp. 433-444.

⁴⁴ Rodin asks this basic question in the Introduction to Rodin, *War and Self-Defense*, p. 4.

act? The answer this paper gives in both cases is that the unjustified attacker's interests in moral goodness and prospects for flourishing give victims and interveners part of their title to act. The paper then shows how that answer extends to cases of national defence.⁴⁵

⁴⁵ I am deeply grateful to Cécile Fabre and to a remarkably diligent referee, who each provided two rounds of very helpful comments on this paper. I also wish to thank Helen Frowe, Lisa Hecht, Chris Mills, Fay Niker, Avia Pasternak, and Kartik Upadhyaya for valuable written feedback on this paper. I thank Fabienne Peter, Jonathan Quong, and Victor Tadros for useful conversations that prompted me to write up my thoughts on taking defensive action for the sake of the attacker. I am grateful to audiences at the ELAC Conference on Legitimate Authority and Political Violence (2015), the Warwick Philosophy Department Colloquium (2015), and the University of Copenhagen Philosophy Research Seminar (2017) for beneficial discussions on this paper.